

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

OCT 22 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

DANIEL MERCADO,

Appellant.

2 CA-CR 2008-0009

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR-20060483

Honorable Robert Duber, II, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, appellant Daniel Mercado was convicted of resisting arrest.¹ The trial court suspended the imposition of sentence, placed Mercado on probation for a twelve-month period, and ordered him to serve a ninety-day jail term. This appeal followed. We affirm.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has reviewed the record and found no arguable legal issue to raise on appeal. In compliance with *Clark*, counsel provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Mercado has not filed a supplemental brief.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that Mercado had engaged in a physical struggle with three uniformed police officers after an officer told him he was under arrest, and he had responded that the officers would “have to do it the hard way.” Although one officer described Mercado’s actions during the arrest as “passive resistance,” another

¹The jury found Mercado not guilty of two other charges: criminal damage and threatening and intimidating. It did not reach a verdict on the charge of aggravated assault against a police officer, and that charge was dismissed upon the state’s motion.

officer described Mercado's resistance as "struggl[ing]," "fighting," "pull[ing] away," "throwing [the officers] off," and "pinching." Thus, substantial evidence supports the conviction. *See* A.R.S. § 13-2508; *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 913-14 (2005).

¶4 Following the state's presentation of evidence at trial, Mercado moved for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. On appeal, counsel asserts the trial court's denial of that motion "may provide the appearance of an arguable issue." Because sufficient evidence was presented, however, from which reasonable jurors could find beyond a reasonable doubt that Mercado had resisted arrest, we conclude the court properly denied the motion. *See State v. Guardagni*, 218 Ariz. 1, ¶ 8, 178 P.3d 473, 475 (App. 2008) ("We review a trial court's denial of a motion for judgment of acquittal for an abuse of discretion and will reverse only if no substantial evidence supports the conviction.").

¶5 We find no error warranting reversal and therefore affirm Mercado's conviction and probationary term.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge